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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 982.

FRED W. STOVER,
Petitioner,

vs.

FARMERS' EDUCATIONAL AND COOPERATIVE UNION OF AMERICA, a Corporation,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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OPINIONS BELOW.

The opinion of the Circuit Court of Appeals, review of which is sought herein, is reported at 250 F.2d 809. Said opinion affirmed a judgment finding petitioner, Fred W. Stover, in contempt of an injunction issued pursuant to an opinion reported at 141 Fed. Supp. 820, which injunction was affirmed on appeal by an opinion reported at 247 F.2d 809, which in turn sets forth in footnotes the Findings of Fact, Conclusions of Law and Decree of the trial court in the injunction case. Obviously, the adjudications, made in the injunction case, cannot be the subject of collateral attacks in this contempt case.

QUESTIONS PRESENTED.

Introductory.

It is the contention of respondent that no substantial questions are presented herein because petitioner, Fred W. Stover, has failed to meet the requirements of Rules 19 and 23 of the Rules of this Court.

Rule 19 provides that a writ of certiorari will issue only if special and important reasons exist. There are no such reasons herein. Also, when due consideration is given to the adjudications made in the injunction case, which cannot be attacked herein, and to the facts actually shown by the record herein, there is no basis whatever for a writ of certiorari being issued herein.

Rule 23 of the Rules of this Court provides that failure of a petitioner to present with accuracy, brevity and clearness, whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition. The petition herein is so inaccurate and confusing that it should be denied for that reason alone.

1. As to Petitioner's Question No. 1.

In petitioner's Question No. 1, it is asserted that the evidence shows only the use of trade names and no use of trade marks, as such. That is a gross misstatement of the evidence. In the injunction case, defendants admitted infringement of the plaintiff's registered trade marks and that such infringements would continue unless enjoined. In this contempt case, defendant, Fred W. Stover, admitted that he conducted his affairs after the injunction was issued substantially as he did before. He clearly admitted violation of the injunction by continuing to infringe said

trade marks. In the injunction case, it was also adjudicated that the use of a trade name that contains a trade mark infringes said trade mark. That adjudication is not subject to attack in this contempt case.

2. As to Petitioner's Question No. 2.

In petitioner's Question No. 2, petitioner again attempts to challenge the adjudication that the use of a trade name which contains a trade mark infringes said trade mark. That adjudication was made in the injunction case and is not open to attack at this time.

3. As to Petitioner's Question No. 3.

In petitioner's Question No. 3, it is asserted that there is no evidence of damage from the infringement of the trade marks herein. It was adjudicated in the injunction case that substantial damage resulted from the wrongful interference with the efforts to re-establish an Iowa Division. That adjudication cannot be attacked now. In this contempt case, the evidence showed that said damage is still being suffered.

4. As to Petitioner's Question No. 4.

In petitioner's Question No. 4, it is again asserted that there is no proof of damage. The comment as to Question No. 3, *supra*, applies to Question No. 4.

5. As to Petitioner's Question No. 5.

In petitioner's Question No. 5, petitioner challenges four adjudications, to-wit: (1) the use of a trade name that contains a trade mark infringes said trade mark; (2) jurisdiction in the injunction case was conferred by Section 1338, (a) and (b), of the Judicial Code as well as by the Lanham Act; (3) the Court of Appeals had the power to deter-

mine item (2), *supra;* (4) the finding of damage from in fringement of the trade marks. The first three adjudica tions were made in the injunction case and are not sub ject to attack herein. The fourth adjudication was mad originally in the injunction case. The evidence in this con tempt case shows that said damage is still being suffered

By reason of the foregoing, it is respectfully submitte that there is no question presented herein which could pos sibly warrant the issuance of a writ of certiorari herein

STATEMENT OF THE CASE.

The injunction decree, which petitioner, Fred W Stover, has violated, was entered pursuant to fourteen Find ings of Fact and six Conclusions of Law, which adjudica tions are particularly important herein because they ar not subject to challenge at this time. Said Findings of Fact Conclusions of Law, and Decree are set forth in footnotes t the Opinion of the Court of Appeals which affirmed sai decree (247 F.2d 309) at pages 810 to 813 of 247 F.2d. The are also set forth at pages 13 to 19 of Appellee's Supple mental Record in the Court of Appeals in this contemp case and also at pages 34 to 38 of said Supplemental Rec ord.

Essentially, the fourteen Findings of Fact were a follows:

1. The injunction case was brought against certai corporate and individual defendants to enjoin the infringe ment by them of three trade marks, one, a symbol, con sisting of a plow, a rake and a hoe, surrounded by a circle next, a collective mark for goods consisting of the word "Union Farmer", and third a service mark consisting of the words "Farmers Union". (S. R. 13, 14).

2. Two of the defendants, Farmers Educational and Cooperation Union of America, Iowa Division, and the Iowa Union Farmer Association, are Iowa corporations (S. R. 14).

3. Jurisdiction is invoked under the Lanham Act (S. R. 14).

4. Defendants conceded plaintiff's exclusive right to use its symbol and admitted that they are using the marks "Union Farmer" and "Farmers Union" and asserted that they intend to continue to use said marks unless restrained from so doing (S. R. 14).

5. The use of the marks, "Union Farmer" and "Farmers Union" by defendants is in direct competition with the plaintiff (S. R. 14).

6. Plaintiff, a Texas corporation, has for its purposes to protect the interests of farmers and said purposes are partially educational, fraternal, benevolent and cooperative (S. R. 14, 15).

7. Plaintiff and its State organizations publish various newspapers which use the mark, "Union Farmer" (S. R. 15).

8. Plaintiff's Iowa Division was chartered in 1917, became incorporated in 1924, was an integral part of plaintiff until March, 1954, when its charter was revoked and the legality of such revocation was conceded by defendants (S. R. 15).

9. The corporation, which had been the Iowa Division, changed its name in 1955 to Iowa Farmers Union, which was the name by which it was commonly or colloquially known when it was the Iowa Division (S. R. 15).

10. Defendant Iowa Union Farmer Association publishes a newspaper known as the "Iowa Union Farmer",

whose mark resembles those of plaintiff's state organization papers, being authorized so to do by the Iowa Farmers Union (S. F. 15, 16).

11. Plaintiff's three trade marks were duly registered in the Principal Register of the Patent Office (S. R. 16).

12. Defendants' activities in Iowa have affected plaintiff's interstate activities as well as its Iowa activities. The use by defendants of the marks, "Union Farmer" and "Farmers Union", is in direct competition with plaintiff. The types of service offered and the names used are so similar that there is bound to be confusion; confusion has occurred and will reoccur. Defendants' activities adversely and seriously affect plaintiff's national organization and its nation wide program (S. R. 16).

13. There is no evidence of invalidity of plaintiff's marks (S. R. 16).

14. Defendants' claim of "unclean hands" was not established (S. R. 16, 17).

The six Conclusions of Law were essentially as follows:

1. Plaintiff's three registered trade marks are valid, subsisting and legally registered marks (S. R. 17).

2. The Court has jurisdiction under the Lanham Act (Sections 1114 and 1121, Title 15, U.S. Code) to enjoin the infringement of plaintiff's marks by defendants (S. R. 17).

3. Defendants are infringing plaintiff's registered marks in such a manner that confusion has resulted and will reoccur unless injunctive relief is granted (S. R. 17).

4. Defendants' activities have affected plaintiff's interstate activities as well as its activities in Iowa. The use by the defendants of the marks, "Union Farmer" and

"Farmers Union" is in direct competition with plaintiff (S. R. 17, 18).

5. The defense of "unclean hands" was not established (S. R. 18).

6. Plaintiff is entitled to a permanent injunction, enjoining the defendants, both corporate and individual, from the use of plaintiff's service mark, "Farmers Union", plaintiff's collective mark, "Union Farmer", and the symbol (S. R. 18).

Pursuant to said Findings of Fact and Conclusions of Law, decree was entered permanently enjoining defendants, both corporate and individual, from making any use whatever, directly or indirectly, of plaintiff's collective mark, "Union Farmer", in connection with the printing, publication and distribution of any newspaper or like periodical, and from making any use whatever, either directly or indirectly, of plaintiff's service marks to-wit: the words, "Farmers Union", and the symbol, consisting of a plow, a rake and a hoe surrounded by a circle, in connection with the dissemination of information pertaining to farming and related industries, and particularly information in connection with cooperatives to aid the farmer in marketing his produce, information relating to educational and entertainment programs, for farmers and their families, information as to proposed legislation that directly or indirectly may affect those engaged in farming and related industries, and services to and for the farmer relating to storage of produce, the making of mortgage loans, the brokerage of produce and livestock, the sale of insurance, and the servicing of farm equipment, and from in any way, directly or indirectly attempting to compete with the plaintiff in its use of said trade marks (S. R. 18, 19).

On appeal to the Court of Appeals, Eighth Circuit, the Findings of Fact were sustained (S. R. 42), as were the

Conclusions of Law, and the decree was affirmed (S. R. 49, 53).

In affirming the trial court's findings and conclusions that defendants had infringed plaintiff's registered marks "Union Farmer" and "Farmers Union", the Court of Appeals stated, in part, as follows:

> "The charter of the defendant corporation was granted in 1917, and conferred upon it the right to use the trade marks and name 'Iowa Farmers Union' or 'Farmers Union in Iowa' in soliciting funds and members and identifying itself and its activities as a component division of the plaintiff. It always availed itself of that right and so held itself out. In March of 1954, its charter was legally revoked by plaintiff as was conceded on the trial and all rights under it were withdrawn.
>
> "Notwithstanding the revocation, the individual Iowa defendants and through them, the Iowa organizations have continued to carry on the same activities under the name 'Iowa Farmers Union' or 'Farmers Union in Iowa' and to use the same trade marks as they did before the revocation * * * they admit they are using and will use the plaintiff's registered trade marks, 'Union Farmer' and 'Farmers Union.' They appeal from the decree of injunction rendered against them forbidding them to do so." (S. R. 39).
>
> * * *
>
> "In paragraph five the court found that defendants' use of the marks 'Union Farmer' and 'Farmers Union' was in direct competition with the plaintiff and we think the finding is fully supported by the evidence. From 1917 to 1954 defendant Iowa Farmers Union operated under a charter from plaintiff as an integral part of plaintiff as plaintiff's Iowa division. In March, 1954, the charter was lawfully revoked as conceded and since the revocation the individual defendants have operated the corporations the same as

before, but without contact with plaintiff. Plaintiff is conducting a campaign to reestablish its Iowa division and replace the disfranchised organization and in direct opposition defendants conduct their campaign for members. Defendants continue to publish the Iowa Union Farmer the same as they did when they were members of the Iowa Division of plaintiff. The plaintiff has operated on a national scale for fifty years. It publishes the newspaper National Union Farmer and has State organizations in 18 of the 29 States in which it has members and at least nine of these publish newspapers using plaintiff's mark 'Union Farmer.' Defendants in using the name Iowa Farmers Union not only use plaintiff's registered mark 'Farmers Union', but also use a name that is identical with the name by which plaintiff's State organizations are commonly known as well as the name by which defendant was known when it belonged to and constituted the Iowa Division of the plaintiff. Obviously the plaintiff and defendants are engaged in the same line of endeavor by the same kind of activities in the same field and defendants' use of plaintiff's mark is in direct competition with plaintiff as found by the court." (S. R. 40)

* * *

"When the charter of the plaintiff's Iowa division was cancelled the defendants were no longer authorized to use plaintiff's registered marks, but they have used them and admit they intend to continue. At one of his meetings, defendant Stover stated, 'Membership in the Iowa Farmers Union does not just mean that you belong to the Farmers Union, but that the Farmers Union belongs to you.' He plainly meant his hearers to understand that the name they were using was not the plaintiff's, but belonged to the defendants' organization and that its members belong to the Farmers Union but not to plaintiff. Obviously defendants use the name in direct competition with the plaintiff and infringe in the field of activity for which the marks are registered." (S. R. 44)

* * *

"The plaintiff's marks have acquired a secondary meaning during the many years of their exclusive use by the plaintiff in the field of its operation and defendants' infringement of them in the same field is violative of the Act." (S. R. 48).

* * *

"Our holding in this case that the District Court had jurisdiction of the case under the Lanham Act and Title 28, United States Code, Sec. 1338 (a) and (b), is based upon the fact that the unfair competition engaged in by the defendants as rightly found by the District Court, was substantially related to the proven infringement by defendants of the plaintiff's trademarks, which were duly registered under the Lanham Act." (S. R. 52).

In view of the foregoing pronouncements, it is clear that, in the injunction case, it was adjudicated that defendants were infringing plaintiff's registered marks, "Union Farmer" and "Farmers Union."

On the question of damages to plaintiff from defendants' infringement of its said marks the Court of Appeals stated as follows:

"Defendants' activities in Iowa impede and hinder the reorganization of plaintiff's Iowa division as an integral part of its national organization. The Iowa part is vital and essential as a part of the national organization and defendants' activities there directly and materially affect plaintiff's national operation." (S. R. 42).

And again, the Court of Appeals stated:

"It is material that defendants were formerly associated with plaintiff and are no longer so associated. The former association makes defendants' infringement and misuse of plaintiff's registered marks much more injurious to plaintiff than if the same wrong

were committed by a stranger. The evidence shows clearly that defendants' conduct greatly increases the cost and difficulty plaintiff encounters in its undertaking to reestablish the Iowa division which is essential to its national organization and interstate operation." (S. R. 48).

By reason of the foregoing, it is clear that in the injunction case, it was adjudicated that plaintiff therein suffered substantial damages from defendants' infringement of its registered marks.

At the outset of the trial of this contempt case, counsel for plaintiff asserted that defendant, Fred W. Stover, could not collaterally attack the adjudications in the injunction case and counsel for defendant Stover promptly agreed that such was the case (R. 15).

The defendant, Fred W. Stover, testified that, except for changing the name of the newspaper from "Iowa Union Farmer" to "U. S. Farm Union News", he made no other change in his operations after the injunction was issued from what they were prior to the entry of the injunction decree (R. 53). Maurice O'Reilly testified to the continuance of Mr. Stover's interference with the efforts to reestablish an Iowa Division and that, since the injunction was issued, he has expended for the National Farmers Union in its organization work in Iowa about $37,000 or $38,000 (R. 21 to 30).

In the trial court's Findings of Fact, in the contempt case, are set forth the injunction and the substance of Findings of Fact, made in the injunction case and designated as Nos. 4, 5, 11 and the substance of Conclusions of Law Nos. 3 and 6 (R. 65, 66). The trial court then stated:

"3. Defendant, Fred W. Stover, is the President and principal managing officer of the Iowa Farmers

Union and the Iowa Union Farmer Association. He publishes and is an editorial contributor to the newspaper now known as 'U. S. Farm Union News', formerly known as 'Iowa Union Farmer'. He is in charge of the activities of said Iowa Farmers Union and said Iowa Union Farmer Association, including the solicitation of subscriptions, memberships, dues and contributions and is in charge of the records and headquarters of said corporations. Not only is he bound to comply with the injunction, quoted in Paragraph 1 hereof, supra, but is under the duty to so supervise and direct the affairs of said corporations that they likewise in their activities would obey said injunction.

"4. The continued use of the names, 'Iowa Farmers Union' and 'Iowa Union Farmer Association', by said corporations and in particular by the defendant, Fred W. Stover, has created confusion and misunderstanding in the community and directly violates the injunction. The name, 'U. S. Farm Union News', is so similar to 'Iowa Union Farmer' that it is deceptive and confusing and creates confusion and misunderstanding among the farm people of Iowa.

"5. Except for the change of the name of the newspaper from 'Iowa Union Farmer' to 'U. S. Farm Union News', defendant, Fred W. Stover, as President of defendants Iowa Farmers Union and Iowa Union Farmer Ass'n, has conducted the affairs of both of said corporations since the entry of said decree the same as he did prior thereto. There can be no reasonable doubt or question that defendant, Fred W. Stover, violated the injunction herein. He is guilty of contempt and is subject to penalty therefor." (R. 66, 67).

The Court's Conclusions of Law Nos. 1 to 4 were as follows:

"1. As above stated, Judge Harper found that defendants were infringing plaintiff's registered marks and enjoined them from further infringement thereof. Except for the change in the name of the defendants'

newspaper from 'Iowa Union Farmer' to 'U. S. Farm Union News', defendants, including and under supervision of the defendant, Fred W. Stover, have continued their operations since the entry of the injunction the same as they had prior thereto. There has been no substantial effort to comply with the injunction. Obviously, defendant, Fred W. Stover, continued to do that which he was enjoined from doing. He is guilty of contempt and is subject to penalty.

"2. The name of a newspaper is in the nature of a trade mark. The law of trade names is identical with that of trade marks. Rights that may accrue in a trade name are by reason of the fact that such trade name becomes in law a trade mark. While a trade name is not strictly a trade mark, it is generally governed as to its use by the same rules as a trade mark.

"3. Plaintiff has registered its marks, 'Union Farmer' and 'Farmers Union'. Judge Harper's findings and conclusions adjudicated that defendants' use of the trade name, 'Iowa Farmers Union', infringed plaintiff's registered mark, 'Farmers Union' and that defendants' use of the trade name 'Iowa Union Farmer Association' infringed plaintiff's registered mark 'Union Farmer'. The adjudications thus made are not subject to collateral attack in these proceedings. Defendant, Fred W. Stover, as President of the Iowa Farmers Union, and as president of the Iowa Union Farmer Association, has done nothing whatever to terminate said infringements by said corporations. He is clearly guilty of contempt. In continuing to supervise and direct the activities of said two corporations, defendant, Fred W. Stover, has clearly violated the injunction.

"4. The change of the name of the newspaper from 'Iowa Union Farmer' to 'U. S. Farm Union News' does not avoid infringement of plaintiff's registered marks. The confusion which has existed heretofore is bound to continue and to reoccur because of the similar-

ity of the name to plaintiff's marks particularly when the type of subscribers to defendants' newspaper and to plaintiff's newspapers is considered." (R. 67, 68).

Judgment and decree was entered fining defendant Stover $1,000.00 with provision for reducing said fine to $500.00 if the injunction was promptly complied with (R. 69, 70).

On appeal, the judgment and decree, punishing defendant Stover for contempt of the injunction, was affirmed (Petition for Writ, p. 24).

On the question of violation of the injunction, the Court of Appeals states:

"The findings are fully supported by the evidence and in turn support the court's conclusion that appellant violated the injunction. The slight alterations of the name of the newspaper appellant published, changing 'Farmers' to 'Farm' but retaining 'Union' and adding 'formerly Iowa Union Farmer' were obviously to circumvent the letter of the injunction while adhering to the infringement and unfair competition.

"The argument that appellant may so continue his invasion of the trade mark rights of the plaintiff despite the injunction that was issued against him after full hearing and fair trial is without merit.

"It is true, the injunction prohibits misuse of 'marks' and 'words' and does not say corporate names. But the Lanham Act includes 'names' and 'words' in its definition of trade marks and service marks, 15 U.S.C.A. at 1127, and the injunction in this case was sufficiently phrased and worded to apprise the appellant of the prohibition against his infringement and unauthorized and unfair competition against plaintiff. It is immaterial that the injunction did not include general prohibition of any use of the corporate names of the defendants. It plainly and unambiguously for-

bade the appellant to use the registered words that had acquired secondary meaning to intrude upon and take away the business that belonged to plaintiff. His violations were properly held to be wilful and in contempt of court." (Pet. for Writ, p. 22).

On the question of damages resulting from the violation of the injunction, the Court of Appeals states:

"(2) It was clear to this court on the appeal from the decree of injunction that the wrongful conduct of this appellant and his co-defendants in infringing the plaintiff's marks and engaging in unfair competition against plaintiff, in connection with such infringement, greatly increases the cost and difficulty plaintiff encounters, in its undertaking to re-establish the Iowa division which is essential to its national organization and interstate operation, and on the trial for the contempt, it was shown that after the injunction was issued, the plaintiff spent about thirty-seven or thirty-eight thousand dollars on its organization work in Iowa, in addition to publications, news letters and other materials. Specific instances where appellant's activities interfered with or prevented organization meetings planned by plaintiff were proved. While it is true that the evidence does not afford means to compute mathematically the precise amount of plaintiff's damage, and indeed the amount is not susceptible of such determination, the evidence leaves no doubt that damage far beyond the amount of the fine, that was imposed, was directly caused the plaintiff by appellants' wrongful conduct. Undoubtedly the cost of attorneys' services that was directly caused were of value greater than the fine." (Pet. for Writ, p. 23).

By reason of the foregoing Statement of the Case, it is clear that there is no basis whatever for the issuance of a writ of certiorari herein.

REASONS FOR DENYING THE WRIT.

I.

The adjudications, made in the injunction case, cannot be attacked in this contempt case.

As heretofore pointed out herein under the heading, "Questions Presented", the basic premise for petitioner's Questions Nos. 1, 2 and 5 (1) is the contention that the evidence shows the use of trade names only and no use of trade marks, as such. This contention of petitioner is contrary to the record. As pointed out in the Statement of the Case, *supra*, the trial court, in its Findings of Fact in the injunction case, determined that defendants admitted using plaintiff's marks and asserted that they intended to continue to do so unless restrained (S. R. 14); that the use of said marks is in direct competition with plaintiff (S. R. 14); defendants' use of said marks adversely affected plaintiff's interstate activities as well as its activities in Iowa, confusion has occurred and will reoccur, defendants' activities seriously affect plaintiff's national organization and its nation wide program (S. R. 16). In its Conclusions of Law in the injunction case, the trial court determined that defendants are infringing said registered marks in such a manner that confusion has occurred and will reoccur (S. R. 17); that defendants' activities adversely affect plaintiff's activities in Iowa and have received national publicity, that the use by the defendants of the marks "Union Farmer" and "Farmers Union" is in direct competition with plaintiff (S. R. 17, 18). Said adjudications clearly establish the use of registered marks as well as trade names and were made in the injunction case.

At the outset of the trial of the contempt case, objection was made that adjudications in the injunction case could not be collaterally attacked in the contempt case and counsel for defendant Stover promptly conceded that such was the case (R. 15). In the trial court's conclusion of law No. 3, the Court determined that the adjudications in the injunction case, that defendants' use of the trade name "Iowa Farmers Union" infringed plaintiff's registered mark, "Farmers Union," and that defendants' use of the trade name, "Iowa Union Farmer Association", infringed plaintiff's registered mark, "Union Farmer", were not subject to collateral attack in the contempt proceedings (R. 68). The Court was clearly right in so holding *Maggio v. Zeitz*, 333 U.S. 56, 92 L. Ed. 476, 68 S. Ct. 401; *U. S. v. United Mine Workers of Amer.*, 330 U.S. 256, 91 L. Ed. 884, 67 S. Ct. 677; *Howat v. Kansas*, 258 U.S. 181, 66 L. Ed. 550, 42 S. Ct. 277; *Gompers v. Buck's Stove & R. Co.*, 221 U.S. 418, 55 L. Ed. 797, 31 S. Ct. 492; Annotation 12 A.L.R. 2d 1107; 37 Am. Jur. 517.

By the same token, in petitioner's Questions Nos. 3, 4, and 5-(4), the basis of petitioner's contentions is that there is no proof of damage to the contemnee. But, as above pointed out herein, the trial court determined in the injunction case, that damage had been suffered. Such adjudication is not subject to collateral attack herein.

In petitioner's Question No. 5 (2) (3) he seeks to attack the holdings, by the Court of Appeals in the injunction case (S. R. 52), that jurisdiction was conferred by Section 1338 (a) and (b) of Title 28, U.S. Code, as well as the Lanham Act. Such adjudication, having been made in the injunction case, cannot be attacked herein.

II

The use of the trade name "Iowa Farmers Union" infringes the registered mark, "Farmers Union", and the use of the trade name, "Iowa Union Farmer Association", infringes the registered mark, "Union Farmer".

As pointed out in Subdivision I hereof, *supra*, the trial court determined, in the injunction case, that the use of the trade name, "Iowa Farmers Union", infringed the registered mark, "Farmers Union", and that the use of the trade name, "Iowa Union Farmer Association", infringed the registered mark "Union Farmer." These adjudications are not subject to attack herein. The record is clear that the use of said trade names has continued notwithstanding the injunction. Obviously petitioner Stover is in contempt of the injunction.

Not only is petitioner estopped to attack the foregoing adjudications, but the Court was clearly right in making said adjudications.

It is well established that the use of a corporate name or trade name that constitutes an infringement of a registered trade mark may be enjoined. The following cases are illustrative.

Sunbeam Corp. v. *Sunbeam Furniture Corp.*, 134 Fed. Supp. 614.

National Lead Co. v. *Wolfe*, (C.C.A. 9) 223 F.2d 195.

Laskowitz v. *Marie Designer*, 119 Fed. Supp. 541.

Book of the Month Club, Inc., v. *Children's etc., Book of the Month Club, Inc.*, 112 Fed. Supp. 151.

Robert C. Winn Enterprises v. *Persinger*, (C.C.A. 9) 229 F.2d 154.

Mandee Fabrics, Inc., v. *Slifka*, 97 Fed. Supp. 187.

Lane Bryant, Inc., v. *Glassman*, 95 Fed. Supp. 320.

The test of infringement is whether the natural and probable consequences of the similarity will lead to confusion, and not whether the defendant intended to confuse or whether actual confusion resulted.

Queen Mfg. Co. v. *Ginsberg Bros.*, (C.C.A. 8) 25 F.2d 284.

S. S. Kresge Co. v. *Winget Kickernick Co.*, (C.C.A. 8) 96 F.2d 978.

Esso, Inc., v. *Standard Oil Co.*, (C.C.A. 8) 98 F.2d 1.

Layton Pure Food Co. v. *Church*, (C.C.A. 8) 182 Fed. 24.

United Drug Co. v. *Obear-Nester Glass Co.*, (C.C.A. 8) 111 F.2d 997.

Rice & Hutchins, Inc., v. *Vera Shoe Co., Inc.*, (C.C.A. 2) 290 Fed. 124.

Little Tavern Shops v. *Davis*, (C.C.A. 4) 116 F.2d 903.

Atlas Diesel Engine Corp. v. *Atlas Diesel School*, 60 Fed. Supp. 429.

The registered mark, "Farmers Union", is entitled to protection from the use of the name, "Iowa Farmers Union", and the registered mark, "Union Farmer", is entitled to protection from the use of the name, "Iowa Union Farmer".

General Finance Loan Co. v. *Gen. Loan Co.*, (C.C.A. 8) 163 F.2d 709.

Queen Mfg. Co. v. *Ginsberg Bros.*, (C.C.A. 8) 25 F.2d 284.

Rossmann v. *Garnier*, (C.C.A. 8) 211 Fed. 401, 406.

Little Tavern Shops v. *Davis*, (C.C.A. 4) 116 F.2d 903.

Sterling Brew. v. *Cold Spring Brew. Corp.*, 100 Fed. Supp. 412.

Esquire, Inc., v. *Maira*, 101 Fed. Supp. 398.

Anheuser-Busch, Inc., v. *Power City Brewery*, 28 Fed. Supp. 740.

Household Fin. Corp. v. *Gen. Household Credit Corp.*, 49 Fed. Supp. 541.

Swift & Co. v. *Brenner*, 125 Fed. 826.
Lever Bros. v. *Pasfield*, 88 Fed 484.

On the issue of confusion, it is highly material that defendants were formerly associated with plaintiff, which association is, of itself, evidence of the likelihood of confusion of substantially identical marks.

Stix, Baer & Fuller Co. v. *A. J. Sweet Co.*, (C.C.A. 8) 49 F.2d 598.
Brinkman v. *Laurette Mfg. Co.*, 21 Fed. 607.
Dad's Root Beer Co. v. *Atkin*, 90 Fed. Supp. 477.
Dad's Root Beer Co. v. *Doc's Beverages*, 94 Fed. Supp. 121, aff. 193 F.2d 77.
3 Callman "Unfair Comp. and Trade Mark" 1535, Sec. 82.2(b)(3).

By reason of the foregoing, it is clear that there is no merit whatever to petitioner's Questions Nos. 1, 2 and 5(1).

III.

The evidence conclusively establishes that the infringement of registered marks herein has caused substantial damage.

As above pointed out, the basis for petitioner's Questions Nos. 3, 4, and 5(4) is the erroneous contention that the evidence fails to show actual damages from the infringement of the registered marks. But, as heretofore pointed out, it was adjudicated in the injunction case that damages had resulted and such adjudication is not subject to collateral attack herein. Also, there was abundant evidence of damages resulting from the infringement of the registered marks herein. The damages arise primarily from petitioner Stover impeding, harassing and interfering with the efforts of the National Farmers Union to reestablish its Iowa Division. The situation is concisely summarized by the statement of the Court of Appeals in the

next to the last paragraph of the Statement of the Case, *supra*. Further elaboration would not appear to be necessary at this time.

It is respectfully submitted that there is no merit whatever to petitioner's asserted Questions Nos. 3, 4, and 5(1) herein.

IV.

The Court of Appeals properly invoked jurisdiction under Section 1338 (a) and (b), Title 28, U.S. Code, in the injunction case.

In petitioner's asserted Question No. 5(2) and (3), counsel challenge the holding of the Court of Appeals in the injunction case (S.R. 52) that jurisdiction was conferred in the injunction case by Section 1338(a) and (b), Title 28, U.S. Code, as well as the Lanham Act. This holding was in the injunction case. It is not subject to attack herein. The holding was correct in any event. The plaintiff invoked the jurisdiction of Section 1338, Title 28, U.S. Code, with reference to its claim of unfair competition (S. R. 9). The Court granted relief from unfair competition (S. R. 19). The trial court mentioned the Lanham Act as the basis for jurisdiction (S. R. 14) but did not limit its jurisdiction to the provisions of said act. The Court of Appeals clearly had the right to claim the benefit of both Section 1338, Title 28, U.S. Code, and the Lanham Act. There is no merit whatever in petitioner's asserted Question No. 5(2) and (3).

CONCLUSION.

Upon the record in this cause, we respectfully submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

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